

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Team # 1	CCRB Case #: 201208682	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/07/2012 12:58 AM, Sunday, 07/08/2012	Location of Incident: East 181st Street and Ryer Avenue; 46th Precinct stationhouse	Precinct: 46	18 Mo. SOL 1/7/2014	EO SOL 1/7/2014	
Date/Time CV Reported Sat, 07/07/2012 1:18 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 07/07/2012 1:18 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Rafael Perdomo	21268	942338	046 PCT
2. POM Kenneth Ayala	10194	946762	046 PCT
3. POM Brendan Cronin	23061	946883	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Ayala	03194	946761	046 PCT
2. SGT Erica Lloyd	02730	930576	046 PCT
3. SSA Keith Bryan	05386	901240	046 PCT
4. SGT Mohamadyah Patwekar	03442	937253	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kenneth Ayala	Discourtesy: On July 7, 2012, at East 181st Street and Ryer Avenue, PO Kenneth Ayala spoke discourteously to § 87(2)(b) and § 87(2)(b) and § 87(2)(b)	
B.POM Rafael Perdomo	Discourtesy: On July 7, 2012, at East 181st Street and Ryer Avenue, PO Rafael Perdomo spoke discourteously to § 87(2)(b)	
C.POM Brendan Cronin	Discourtesy: On July 8, 2012, at the 46th Precinct stationhouse, PO Brendan Cronin spoke discourteously to § 87(2)(b)	
D.POM Rafael Perdomo	Discourtesy: On July 8, 2012, at the 46th Precinct stationhouse, PO Rafael Perdomo spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
E.POM Rafael Perdomo	Abuse: On July 8, 2012, at the 46th Precinct stationhouse, PO Rafael Perdomo threatened to arrest § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

Case Summary

On July 7, 2012, and July 8, 2012, § 87(2)(b) filed two complaints with the Civilian Complaint Review Board via the call processing system on behalf of himself, § 87(2)(b) and § 87(2)(b) (encl. 8a-8c).

On July 7, 2012, at 12: 58 a.m., § 87(2)(b) and the aforementioned individuals were approached by officers from the 46th Precinct on East 181st Street and Ryer Avenue in the Bronx. On July 8, 2012, at 8:26 p.m., § 87(2)(b) went to the 46th Precinct stationhouse to retrieve the name and badge number of an officer involved in the first incident. The following allegations resulted from these interactions:

Allegation A: Discourtesy: On July 7, 2012, at East 181st Street and Ryer Avenue, PO Kenneth Ayala spoke discourteously to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation B: Discourtesy: On July 7, 2012, at East 181st Street and Ryer Avenue, PO Rafael Perdomo spoke discourteously to § 87(2)(b)

§ 87(2)(g)
§ 87(2)(g)

Allegation C: Discourtesy: On July 8, 2012, at the 46th Precinct stationhouse, PO Brendan Cronin spoke discourteously to § 87(2)(b)

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation D: Discourtesy: On July 8, 2012, at the 46th Precinct stationhouse, PO Rafael Perdomo spoke discourteously to § 87(2)(b)

Allegation E: Abuse of Authority: On July 8, 2012, at the 46th Precinct stationhouse, PO Rafael Perdomo threatened to arrest § 87(2)(b)

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(4-b) § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
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§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-year-old black male who stands 6'1" tall, weighs 175 pounds, and has black hair and brown eyes. At the time of § 87(2)(b)'s interview at the CCRB, he was employed as § 87(2)(b).

CCRB Testimony

On July 17, 2012, § 87(2)(b) was interviewed at the CCRB (encl. 10a-10h). § 87(2)(g)

On November 18, 2013, he provided additional information (encl. 10i). All of § 87(2)(b)'s statements are summarized below with any inconsistencies noted.

On July 7, 2012, at approximately 12:58 a.m., § 87(2)(b) arrived at East 181st Street and Ryer Avenue in the Bronx, where a group of § 87(2)(b)'s friends and acquaintances that included § 87(2)(b)

and § 87(2)(b) were socializing. Some of these individuals were drinking beverages in Styrofoam cups, the contents of which § 87(2)(b) did not know. § 87(2)(b) said the cups could have contained alcohol, but could have contained anything else, as it was a hot day. Shortly after arriving, § 87(2)(b) went to a store around the block on East 181st Street and purchased a cranberry juice and a cup of ice. As § 87(2)(b) was returning to East 181st Street and Ryer Avenue, he saw a black unmarked van reverse from the 46th Precinct stationhouse, located across the street, to the area in which § 87(2)(b) and the group of individuals were located.

A uniformed officer, identified via investigation as PO Kenneth Ayala of the 46th Precinct (described as a Hispanic male, 5'7" tall, 240 lbs., chubby, black bushy hair close cropped on the side, 31 or 32 years old with badge number "10194"), exited the van and approached one of the individuals holding a cup. PO Kenneth Ayala inquired what the individual was drinking and took the cup and smelled the contents. § 87(2)(b) who was standing five feet away from PO Kenneth Ayala, informed him that his actions were unconstitutional. PO Kenneth Ayala responded, "Get the fuck out of here," in the direction of § 87(2)(b) and the group. A uniformed officer, identified via investigation as PO Rafael Perdomo of the 46th Precinct (described as a Hispanic male, 5'11" tall, 230 lbs., bald, brown/black eyes, 35 or 36 years old, with badge number "21268"), who was inside the van with the front passenger door open, went over the loudspeaker and informed the individual whose cup had been taken that he was going to get a summons because of his "wise ass friend," in reference to § 87(2)(b). After the individual was issued a summons, PO Kenneth Ayala reentered the van and it returned to the stationhouse. PO Kenneth Ayala, PO Perdomo and two uniformed officers, identified via investigation as SGT Erica Lloyd (described as a black female) and PO Brendan Cronin (described as a white male with blonde hair and blue eyes) of the 46th Precinct, exited the van and entered the stationhouse. In his original statement, § 87(2)(b) stated that the twin brother of PO Kenneth Ayala, identified via investigation as PO Joseph Ayala of the 46th Precinct, was also present for this

incident.

Approximately five minutes later, during which time § 87(2)(b) was still outside socializing, PO Kenneth Ayala, PO Perdomo, SGT Lloyd and PO Cronin exited the stationhouse and approached § 87(2)(b). § 87(2)(b) retrieved his cellphone from his pocket and PO Kenneth Ayala informed him that he was not allowed to use his cellphone. § 87(2)(b) asked why he could not use his cellphone, as he was not under arrest. PO Kenneth Ayala did not respond, but asked § 87(2)(b) for his identification and § 87(2)(b) complied. PO Kenneth Ayala passed § 87(2)(b)'s identification to PO Perdomo, who used his cellphone to run § 87(2)(b)'s license number. During this time, § 87(2)(b) repeated that it was unconstitutional to walk up to individuals and smell the contents of their cups.

PO Perdomo began to write a summons in front of § 87(2)(b). § 87(2)(b) came closer to PO Perdomo and stood approximately four feet away. § 87(2)(b) asked PO Perdomo why he was being issued a summons and PO Perdomo replied, "Back the fuck up, you have no rights." § 87(2)(b) was issued a summons for disorderly conduct, but the name and badge number on the summons was illegible. PO Kenneth Ayala, PO Perdomo, SGT Lloyd and PO Cronin then returned to the stationhouse on foot. § 87(2)(b) of a nearby store, identified via investigation as Ginger Supermarket Corporation, also witnessed this along with five or six other unidentified individuals in the area.

On July 8, 2012, at approximately 8:26 p.m., § 87(2)(b) took his summons and returned to the corner of East 181st Street and Ryer Avenue to look for PO Perdomo because he wanted to retrieve his name and badge number. PO Kenneth Ayala, PO Perdomo, PO Cronin and PO Joseph Ayala (described as a Hispanic male, 5'7" tall, 240 lbs., chubby, black bushy hair close cropped on the side and 31 or 32 years old) arrived at the 46th Precinct stationhouse in the same unmarked black van from the day before.

As the officers were walking into the stationhouse, § 87(2)(b) followed them inside. The officers noticed § 87(2)(b) and PO Cronin said, "You've got a lot of balls coming over here, get the fuck out of here, you got some fucking balls." § 87(2)(b) approached an officer at the desk, who § 87(2)(b) believed was a sergeant because he seemed to be in charge and was identified via investigation as SGT Mohamadyah Patwekar (described as a Hispanic male, wearing prescription glasses, gray in his hair, 5'7" to 5'8" tall, thin body build, 37 to 40 years old) of the 46th Precinct. § 87(2)(b) pointed to PO Perdomo and asked for his name and badge number, explaining that it was illegible on the summons he was issued. PO Perdomo took § 87(2)(b)'s summons, asked for § 87(2)(b)'s identification and § 87(2)(b) complied. PO Perdomo left the desk with § 87(2)(b)'s identification and summons in order to rewrite the summons. SGT Patwekar instructed § 87(2)(b) to wait outside the stationhouse.

§ 87(2)(b) exited the stationhouse and began playing with his cell phone, unintentionally triggering an audio recording application. In his phone statement, § 87(2)(b) did not mention that he was asked to exit the stationhouse or that he did so. § 87(2)(b) reentered the stationhouse and SGT Patwekar asked how he could help § 87(2)(b). § 87(2)(b) began relating the events of July 7, 2012, but before he could finish, PO Perdomo returned with a new summons, § 87(2)(b)'s identification and piece of paper. PO Perdomo said that in § 87(2)(b)

§ 87(2)(b) PO Perdomo said that § 87(2)(b) now had his information on the new summons. PO Perdomo verbally said his badge number, handed § 87(2)(b) the new summons and his identification and told § 87(2)(b) to "get the hell out of here." PO Perdomo said that if he saw § 87(2)(b) on a corner, he would be arrested. § 87(2)(b) then left the stationhouse.

During the interview, the recording was played that § 87(2)(b) obtained with his phone, which recorded the following. A male voice, which § 87(2)(b) identified as that of PO

Perdomo, stated his badge number as 21268 and § 87(2)(b) repeats it. PO Perdomo tells § 87(2)(b) in a raised voice to “get the hell out of the stationhouse,” and “If I ever see you on the fucking corner, I’m going to lock you up..(unintelligible)...get the hell out of here.” § 87(2)(b) his voice still at a conversational volume, said “I got you.”

Audio Recording

On July 12, 2013, § 87(2)(b) provided the audio recording taken at the 46th Precinct stationhouse on July 8, 2012. § 87(2)(b) stated that he cut down the beginning of the recording that only contained background noise to make it smaller and could not provide that unedited version upon request. The following is the transcription of the audio recording which is 3 minutes and 21 seconds.

From 00:00 to 00:17, background noises that include unintelligible voices are heard. § 87(2)(b) is then heard explaining the events of July 7, 2012, which are consistent with that given in his CCRB statement. A male voice, identified as SGT Patwekar, is heard making verbal responses while § 87(2)(b) is talking, indicating understanding of what is being said. SGT Patwekar says that PO Perdomo is writing § 87(2)(b) another summons and § 87(2)(b) responds that he does not need another summons, he just needs his badge number. At 02:10, a second male voice is heard, identified via investigation as PO Perdomo. PO Perdomo said, “Do you recall, um, in § 87(2)(b)?” § 87(2)(b) said, “Ah, what? What’s that?” PO Perdomo said, “For, um, standing on the corner drinking beer?” § 87(2)(b) said, “Ah, I wasn’t standing on the corner drinking no beer, no.” PO Perdomo said, “Queens?” § 87(2)(b) said, “Queens – oh, that was (unintelligible).” PO Perdomo said, “§ 87(2)(b)?” § 87(2)(b), § 87(2)(b)?” § 87(2)(b) said, “Yeah.” PO Perdomo said, “You’re 5-10-1-75-8-6-(unintelligible)-67?” § 87(2)(b) said, “Not 5-10.” PO Perdomo said, “My tax number is here. My shield number is 21268.” § 87(2)(b) said, “21268.” PO Perdomo said, “There’s the CCRB number. Leave.” § 87(2)(b) interjects and says, “Let me ask you a question. Why did you--” PO Perdomo said, “I don’t have to answer any questions. You want my ba—you came here to get my badge number? Now you have it.” § 87(2)(b) says something unintelligible. PO Perdomo continues at 02:41, “Get the hell out of the precinct. Get out.” § 87(2)(b) said, “Cool. No problem.” PO Perdomo said, “All right? I see you on the fucking corner? I’m gonna lock you up and bring you here and you could hang out here, § 87(2)(b) Get the hell out.” § 87(2)(b) said, “I got you.” PO Perdomo said, “I know, I got you, too.” § 87(2)(b) said, “I got you.” From 02:57 to 03:21, the end of the audio recording, background noises are heard.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-year-old female.

CCRB Statement

On July 25, 2012, § 87(2)(b) provided a phone statement to the CCRB (encl. 11a).

On the date and time of the incident, § 87(2)(b) was standing outside Ginger Supermarket Corporation on East 181st Street and Ryer Avenue in the Bronx, § 87(2)(b). § 87(2)(b) who she knows, and several other men were at the corner talking when a uniformed officer, identified via investigation as PO Kenneth Ayala (described as a Hispanic male, short, stocky, black hair and in his thirties), and a couple other uniformed officers walked from the 46th Precinct across the street and approached the men and told them to leave. PO Kenneth Ayala asked for identification from all the individuals. § 87(2)(b) showed PO Kenneth Ayala his identification and informed PO Kenneth Ayala that they had rights. PO Kenneth Ayala said to § 87(2)(b) "You have no rights." PO Kenneth Ayala then wrote § 87(2)(b) a summons before all the officers left.

Between July 25, 2012, and August 6, 2012, five calls were made to § 87(2)(b). Each time except once, a voicemail was left. One message was left with an unidentified female who answered the phone. On August 1, 2012, and August 6, 2012, two please call letters were sent to § 87(2)(b) and they have not been returned by the United States Postal Service (USPS). On May 16, 2013, a search was conducted of the New York City Department of Corrections website that revealed that § 87(2)(b) is not incarcerated.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-year-old black male.

CCRB Statement

On July 25, 2012, § 87(2)(b) provided a phone statement to the CCRB (encl. 12a). § 87(2)(b) corroborated § 87(2)(b)'s statement with the following exceptions.

One of the uniformed officers, identified via investigation as PO Kenneth Ayala, asked one of the individuals what he was drinking, took the individual's cup and smelled it. § 87(2)(b) informed PO Kenneth Ayala that his actions were unconstitutional.

The officers left and returned shortly thereafter to issue the individual that had been holding the cup a summons. One of the other officers (described as a possibly Hispanic male), told § 87(2)(b) "You don't have any rights."

On August 6, 2012, § 87(2)(b) missed his previously scheduled CCRB interview without calling ahead of time and a please call letter was sent to him that has not been returned by the USPS. On August 6, 2012, and August 8, 2012, two calls were placed to § 87(2)(b). One message was left with an unidentified male who answered the phone and one voicemail was left. On August 13, 2012, a please call letter was sent to § 87(2)(b) and it has not been returned by the USPS. On May 16, 2013, a search was conducted of the New York City Department of Corrections website that revealed that § 87(2)(b) is not incarcerated.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-year-old black male.

CCRB Statement

On July 30, 2012, § 87(2)(b) provided a phone statement to the CCRB (encl. 13a). § 87(2)(b) corroborated § 87(2)(b)'s statement with the following exceptions and additional information.

The individual that was drinking out of the cup was issued a summons and the officers left. The same officers returned ten minutes later and issued a summons to § 87(2)(b) for disorderly conduct. An officer, identified via investigation as PO Perdomo (described as a white or Hispanic male, 5'9" or 5'10", 190 to 210 pounds, heavy build, black hair, in his mid-twenties), told § 87(2)(b) "You have no rights."

On August 13, 2012, § 87(2)(b) missed his previously scheduled CCRB interview without calling ahead of time and a please call letter was sent to him that has not been returned by the USPS. On August 13, 2012, and August 15, 2012, two calls were made to § 87(2)(b) and a voicemail was left both times. On May 16, 2013, a search was conducted of the New York City Department of Corrections website that revealed that § 87(2)(b) is not incarcerated.

Attempts to Contact Civilians

- On July 30, 2012, a LexisNexis search was conducted for § 87(2)(b) that yielded a phone number and address. Between July 30, 2012, and August 8, 2012, five calls were made to § 87(2)(b). The first and second time, a voicemail was left for § 87(2)(b). The last three times,

the phone number was out of service. On August 1, 2012, and August 6, 2012, two please call letters were sent to § 87(2)(b) and have not been returned by the USPS. On May 16, 2013, a search was conducted of the New York City (NYC) Department of Corrections (DOC) website that revealed that § 87(2)(b) is not incarcerated.

- On July 30, 2012, a LexisNexis search was conducted for § 87(2)(b) that yielded a phone number and an address. Between July 30, 2012, and August 13, 2012, five calls were placed to § 87(2)(b). Each time, the phone number was not in service. On August 1, 2012, and August 6, 2012, two please call letters were sent to § 87(2)(b) and have not been returned by the USPS. On May 16, 2013, a search was conducted of the NYC DOC website that revealed that § 87(2)(b) is not incarcerated.
- On July 30, 2012, a LexisNexis search was conducted for § 87(2)(b) that yielded an address, but no phone number. On August 1, 2012, and August 6, 2012, two please call letters were sent to § 87(2)(b) and both were returned by the USPS. On May 16, 2013, a search was conducted of the NYC DOC website that revealed that § 87(2)(b) is not incarcerated.
- A LexisNexis search could not be conducted for § 87(2)(b) due to the commonality of the name and the lack of available information. On June 27, 2013, a search of the NYC DOC website revealed one inmate named § 87(2)(b). Without further information, it could not be determined that this was the correct individual and he was therefore not contacted in regards to this case.
- On July 30, 2012, a LexisNexis search was conducted for § 87(2)(b) that yielded an address, but no phone number. On August 1, 2012, and August 6, 2012, two please call letters were sent to § 87(2)(b) and both were returned by the USPS. On May 16, 2013, a search was conducted of the NYC DOC website that revealed that § 87(2)(b) is not incarcerated.

NYPD Statements:

Subject Officer: PO RAFAEL PERDOMO

- *PO Perdomo is a § 87(2)(b) year old male who stands 5'10" tall, weighs 220 pounds, and is bald with brown eyes*
- *On July 7, 2012, PO Perdomo was on duty from 9:30 p.m. until 6:05 a.m. on July 8, 2012, was assigned to Conditions with PO Cronin and PO Kenneth Ayala, was dressed in uniform and using unmarked black van number 8390.*
- *On July 8, 2012, PO Perdomo was on duty from 4:00 p.m. until 12:35 a.m. on July 9, 2012, was assigned to Conditions with PO Joseph Ayala, was dressed in uniform and using unmarked black van number 8390.*

Memo Book

PO Perdomo had no entries in his memo book for the incident on July 7, 2012 (encl. 14a-14d). PO Perdomo made the following notations in his memo book for July 8, 2012 (encl. 15a-15c). At 8:26 p.m., a summons for § 87(2)(b), number § 87(2)(b) was issued to § 87(2)(b).

Summonses

On July 7, 2012, at 12:58 a.m., PO Perdomo issued § 87(2)(b) summons number § 87(2)(b) (encl. 14e-14f) for § 87(2)(b). The narrative states that § 87(2)(b) was blocking pedestrian passage on the corner of East 181st Street and Ryer Avenue and refused to move after being asked to do so. On July 8, 2012, at 8:26 p.m., PO Perdomo issued § 87(2)(b) summons number § 87(2)(b) (encl. 14g) for § 87(2)(b).

CCRB Testimony

On August 29, 2012, and September 24, 2013, PO Perdomo was interviewed at the CCRB. (encl. 16a-16f).

On July 7, 2012, PO Perdomo observed a group of six or seven individuals sitting in collapsible camping chairs on the corner of East 181st Street and Ryer Avenue, which is directly across the street from the 46th Precinct stationhouse. § 87(2)(b) was not sitting in a chair, but standing next to a blue mailbox. The individuals were positioned in a way that blocked pedestrian traffic on the sidewalk. These individuals are frequently on the corner, but not always apprehended. Several of these individuals, but not § 87(2)(b) were drinking out of standard size, white Styrofoam cups, which led PO Perdomo to suspect that the cups contained alcoholic beverages, given that he has issued summonses before to individuals in the area for open containers.

PO Perdomo observed these individuals when he pulled up in the unmarked black van with Sgt. Lloyd, PO Kenneth Ayala and PO Joseph Ayala, the latter two of whom are brothers. The officers pulled to the side on Ryer Avenue, which is a one-way street, parked the van in front of the stationhouse, exited the van, and crossed Ryer Avenue to approach the individuals. PO Perdomo decided to approach these individuals because they were blatantly drinking alcohol in front of the precinct stationhouse. PO Perdomo said something to Sgt. Lloyd to the effect of him wanting to move the individuals along, but did not remember what specifically he said or what specifically was said in response.

The officers informed the individuals that they had to move because they were blocking pedestrian traffic. Some of the individuals protested by saying that they lived there. PO Perdomo told them they had to move because they do not live on the corner on the sidewalk. § 87(2)(b) said, “Well, I’m not drinking alcohol.” The officers told § 87(2)(b) that he still had to move along. § 87(2)(b) said, “I don’t have to move. This is wrong. We live out here, we work.” PO Perdomo said, “Yeah, but you’re still blocking the corner and plus your friends are drinking. So, we’re not in the wrong for stopping you guys for this. One, you’re drinking and two, you’re blocking the corner. Three, you’re literally across the street, so you expect the cops not to say nothing?” PO Perdomo did not hear any officer say, “Get the fuck out of here,” or call § 87(2)(b) a “wise ass.”

§ 87(2)(b) did not move after PO Perdomo asked him to move one or two more times, so PO Perdomo obtained § 87(2)(b)’s identification, which he gave willingly. PO Perdomo issued § 87(2)(b) a summons for disorderly conduct because he refused to follow the officers’ orders. This occurred approximately five minutes into the incident. PO Perdomo did not recall if anyone was issued a summons for drinking alcohol. The entire incident lasted approximately seven minutes. PO Perdomo did not say to § 87(2)(b) “Back the fuck up, you have no rights,” nor did he hear any other officer say this to him.

The individuals, including § 87(2)(b) moved a short distance up the street and those with chairs set them up so that they were not blocking the sidewalk, but they were blocking the entrance to a building. PO Perdomo decided not to approach the individuals again because this was a “battle” he did not want to engage in, as it may have resulted in an arrest, which PO Perdomo wanted to avoid.

On July 8, 2012, PO Perdomo saw § 87(2)(b) on the same corner that he was on the previous day, again standing next to the blue mailbox. PO Perdomo was with Sgt. Lloyd, PO Kenneth Ayala, PO Joseph Ayala, PO John Kiernan, and PO Salvatore Taveri in the same unmarked black van from the previous incident. In his second interview, PO Perdomo said that PO Cronin was also present. PO Perdomo exited the van with the other officers and was walking into the 46th Precinct stationhouse and noticed that § 87(2)(b) followed him inside, closely

behind him. PO Perdomo stepped aside and waited for § 87(2)(b) to enter the stationhouse before he did because § 87(2)(b) was following so closely. No officer spoke to § 87(2)(b) at this time. PO Perdomo did not say, “You’ve got a lot of balls coming here, get the fuck out of here, you got some fucking balls,” nor did any officer say this.

§ 87(2)(b) entered the stationhouse and disregarded two people in line by walking straight to the desk where the desk sergeant typically sits. Nothing was spoken between PO Perdomo and § 87(2)(b) at this time, but eye contact was made and § 87(2)(b) went to speak with a supervisor, which led PO Perdomo to believe that § 87(2)(b) was there to collect his name and badge number and file a complaint. PO Perdomo followed § 87(2)(b) inside and went to the back, but re-emerged because he heard § 87(2)(b) screaming. PO Perdomo did not recall who was working at the desk on this day or if it was a sergeant.

§ 87(2)(b) in a loud and angry voice, asked the officer sitting behind the desk what PO Perdomo’s name and badge number was because he had issued him a summons the day before. PO Perdomo approached § 87(2)(b) and asked for his identification, which § 87(2)(b) provided. PO Perdomo told § 87(2)(b) to wait a second, and went to a backroom of the stationhouse, which was out of § 87(2)(b)’s sight. PO Perdomo discovered that § 87(2)(b) had been arrested in Queens on an earlier date for § 87(2)(b). PO Perdomo printed out this arrest report and went to the front of the stationhouse where § 87(2)(b) was waiting.

PO Perdomo asked § 87(2)(b) if he had ever been arrested before and § 87(2)(b) said that he had not been. PO Perdomo showed § 87(2)(b) the arrest report and asked him if he remembered the incident in Queens. § 87(2)(b) said that he did remember the incident, but that it was a misunderstanding. PO Perdomo said, “Yeah, but you were arrested for the same thing. So, it’s not like I’m, you know, picking on you, you know?”

PO Perdomo handed § 87(2)(b) a summons for § 87(2)(b), pointed to his badge number which was displayed on his uniform over his chest, and showed § 87(2)(b) the number to the CCRB which was displayed on the wall. § 87(2)(b) never asked for the number to CCRB, but PO Perdomo assumed he wanted to make a complaint since he inquired about his name and badge number. PO Perdomo told § 87(2)(b) to leave the precinct stationhouse by saying “get out” and § 87(2)(b) complied. PO Perdomo did not say, “Get the hell out of the precinct,” or “If I ever see you on the fucking corner, I’m going to lock you up.” Besides the officer behind the desk and PO Perdomo, no other officer interacted with PO Perdomo during this incident.

The recording provided by § 87(2)(b) was played in PO Perdomo’s CCRB interview. PO Perdomo identified his voice in the recording. After hearing the recording, PO Perdomo amended his statement and acknowledged that he said, “You came here for my badge number? Now you have it. Get the hell out of the precinct. Get out. If I ever see you on the fucking corner, I’m going to lock you up ...(unintelligible)... § 87(2)(b) get the hell out.” PO Perdomo did not recall saying this until he heard the recording.

PO Perdomo said that he told § 87(2)(b) he would be arrested on the corner because § 87(2)(b) is not in observance of the law and disrespectful because he is always on the corner every day. PO Perdomo was trying to communicate to § 87(2)(b) that a summons was in lieu of an arrest and although officers in the Bronx typically issue summonses before arresting individuals, officers have the right to arrest individuals for certain violations. PO Perdomo said that the manner in which he was communicating this was aggressive, but was done in this way because § 87(2)(b) does not understand the law.

Subject Officer: PO KENNETH AYALA

- *PO Kenneth Ayala is a § 87(2)(b) -year-old Hispanic male who stands 5'6" tall, weighs 230 pounds, and has brown hair and brown eyes.*
- *On July 7, 2012, PO Kenneth Ayala was on duty from 9:30 p.m. until 6:05 a.m. on July 8, 2012, was assigned to Conditions with SGT Erica Lloyd, PO Rafael Perdomo, PO Joseph Ayala and another officer he could not recall, was dressed uniform and using unmarked van number 8390.*
- *On July 8, 2012, PO Kenneth Ayala was on duty from 5:30 p.m. until 6:05 a.m. on July 9, 2012, was assigned to Conditions with PO Rafael Perdomo and PO Joseph Ayala, was dressed in uniform and using unmarked van number 8390.*

Memo Book

PO Kenneth Ayala has no entries in his memo book regarding either of the incidents on July 7, 2012, or July 8, 2012 (encl. 17a-17d).

CCRB Testimony

PO Kenneth Ayala was interviewed at the CCRB on August 31, 2012 (encl. 18a-18c). ■

§ 87(2)(g)

On July 7, 2012, PO Kenneth Ayala pulled up to the 46th Precinct stationhouse in unmarked van number 8390 with an officer PO Kenneth Ayala could not recall, PO Perdomo, Sgt. Lloyd and PO Joseph Ayala.

PO Kenneth Ayala observed pedestrians weaving through the chairs that the group of individuals were using or crossing the street to avoid the group altogether. This group was located in the middle of the block.

When the van was close to the individuals, PO Kenneth Ayala noticed that all of the individuals, including § 87(2)(b) were drinking out of either white, sixteen ounce, Styrofoam cups like § 87(2)(b)s or orange juice containers. When the group noticed the officers, some put down their containers on the ground.

PO Perdomo told the group to move along. The officers then returned to the stationhouse because they had an arrestee they needed to bring inside. PO Kenneth Ayala did not recall how long this took. PO Perdomo, PO Kenneth Ayala, PO Joseph Ayala and SGT Lloyd exited the stationhouse to re-enter the van when they noticed that the group had moved only to the very corner of East 181st Street and Ryer Avenue and still had their open containers. Instead of reentering the van, the officers walked across the street to approach the group.

PO Perdomo again ordered the group to move along. The officers explained to the group why they needed to move along and explained that summonses were in lieu of arrest. The officers picked up some of the containers that were on the floor near the individuals and smelled them, and determined that the individuals had been drinking alcohol. PO Kenneth Ayala did not hear any officer call § 87(2)(b) a "wise ass." PO Joseph Ayala issued a summons to an individual for an open container, but PO Kenneth Ayala did not recall who this individual was. The individual became irate because he was receiving a summons, which caused PO Kenneth Ayala's attention to be diverted from the group to the individual. After the summons was issued, the officers re-entered the van and resumed patrol. PO Kenneth Ayala did not recall if PO Joseph Ayala re-entered the van or returned to the 46th Precinct stationhouse.

The officers drove around the block and noticed that all the individuals from the group dispersed except § 87(2)(b). The officers approached § 87(2)(b) who stated that it was his constitutional right to stand at the corner and was irate. PO Kenneth Ayala did not say, “Get the fuck out of here.” § 87(2)(b) said that an open container was not a serious crime while there were others committing murders and more serious crimes. PO Kenneth Ayala did not hear any officer say to § 87(2)(b) “You have no fucking rights.” After PO Perdomo issued a summons to § 87(2)(b) for refusing to disperse, the officers re-entered the van and continued their patrol.

On July 8, 2012, PO Kenneth Ayala and PO Perdomo were entering the 46th Precinct stationhouse when they observed § 87(2)(b) following them inside. PO Kenneth Ayala and PO Perdomo were not with any other officers. § 87(2)(b) told PO Perdomo that he wanted his name and badge number. PO Kenneth Ayala did not remember what, if anything, was said in response.

§ 87(2)(b) entered the stationhouse behind the officers. § 87(2)(b) began yelling at the desk sergeant that he wanted PO Perdomo’s badge, but PO Kenneth Ayala proceeded to a backroom without hearing the rest of the interaction. PO Perdomo stayed with § 87(2)(b) for a moment, but returned to the backroom with PO Kenneth Ayala, and then went out again to interact with § 87(2)(b). PO Kenneth Ayala learned later that day that § 87(2)(b) was issued a summons for disorderly conduct. PO Kenneth Ayala learned nothing else about the incident with § 87(2)(b). PO Kenneth Ayala did not hear PO Perdomo say to § 87(2)(b) “Get the hell out of the stationhouse,” or “If I ever see you on the fucking corner, I’m going to lock you up.” When PO Kenneth Ayala heard the recording provided by § 87(2)(b) he said that § 87(2)(b)’s voice on the recording was calmer than when he first entered the stationhouse.

Subject Officer: PO BRENDAN CRONIN

- *PO Cronin is a § 87(2)(b)-year-old white male who stands 5’10” tall, weighs 230 pounds, and has blonde hair and blue eyes.*
- *On July 7, 2012, PO Cronin was on duty from 9:30 p.m. until 6:05 a.m. on July 8, 2012, was assigned to Conditions with PO Perdomo, was dressed in uniform and using unmarked vehicle number 8390.*
- *On July 8, 2012, PO Cronin was on duty from 9:30 p.m. until 6:05 a.m. on July 9, 2012, was assigned to Conditions with PO Perdomo, PO Joseph Ayala and PO Kenneth Ayala and using unmarked vehicle number 8859.*

Memo Book

PO Cronin had no entries in his memo books regarding either of the two incidents (encl. 19a-19d).

CCRB Testimony

On February 6, 2013, PO Brendan Cronin was interviewed at the CCRB (encl. 20a-20c).

§ 87(2)(g)

On July 7, 2012, the individuals on East 181st Street and Ryer Avenue were drinking out of white Styrofoam cups. PO Perdomo asked the individuals for identification and started speaking with § 87(2)(b). PO Cronin could tell § 87(2)(b) was being combative by his body language and the fact that § 87(2)(b) was “mouthing off,” but PO Cronin could not remember what he said. While § 87(2)(b) spoke to PO Perdomo, some of the other members of the group shouted comments that included “Leave him alone,” but PO Cronin could not remember what else they said. PO Cronin told some of the individuals to “take a hike,” and the individuals responded by yelling, “We don’t have to go anywhere, we know our rights.” None of the

individuals left the scene. This interaction did not attract the attention of any individual not in the initial group. PO Cronin did not recall hearing any officer say, "Get the fuck out of here," or refer to § 87(2)(b) as a "wise ass."

PO Cronin did not take any of the cups from the individuals to determine if there was alcohol inside and did not recall if any other officer did this. PO Perdomo wrote a summons for § 87(2)(b) but PO Cronin did not know what this summons was for and had no conversation with PO Perdomo about it after the incident. No other individual besides § 87(2)(b) was issued a summons and PO Cronin did not know why this was so. PO Cronin did not hear any officer say, "Back the fuck up, you have no rights."

On July 8, 2012, PO Cronin was walking into the 46th Precinct stationhouse with PO Perdomo, PO Joseph Ayala and PO Kenneth Ayala when § 87(2)(b) followed them inside about a car's length behind them. The officers did not interact with § 87(2)(b) while entering the stationhouse. PO Cronin did not say, "You've got a lot of balls coming over here, get the fuck out of here, you got some fucking balls," nor did he hear any other officer say this. § 87(2)(b) entered the stationhouse, bypassed the stop sign for civilians to approach the desk and yelled, while pointing at PO Perdomo, "I want his badge number! I want his badge number!"

PO Cronin walked to a back room about a minute after walking into the stationhouse that is three or four car lengths away from where § 87(2)(b) was and did not witness any further interaction between § 87(2)(b) and PO Perdomo. PO Cronin did not have any conversation about § 87(2)(b) with any other officer after this incident.

When PO Cronin heard the recording provided by § 87(2)(b) he said that § 87(2)(b)'s voice on the recording was calmer than when he was yelling at PO Perdomo.

Witness Officer: SGT ERICA LLOYD

- SGT Lloyd is a § 87(2)(b)-year-old black female who stands 5'3" tall, weighs 120 pounds, and has black hair and brown eyes.
- On July 7, 2012, SGT Lloyd was on duty from 9:15 p.m. until 6:12 a.m. on July 8, 2012, was assigned to Conditions Sergeant, was working with PO Perdomo, PO Joseph Ayala, PO Kenneth Ayala, and PO Cronin, was dressed in uniform and using an unmarked van, number 8390.
- On July 8, 2012, SGT Lloyd was on duty from 5:15 p.m. until 6:12 a.m. on July 9, 2012, was assigned to Conditions Sergeant, was working with PO Perdomo, PO Joseph Ayala and PO Kenneth Ayala, was dressed in uniform and using an unmarked van, number 8390.

Memo Book

SGT Lloyd had no entries in her memo book regarding this incident (encl. 21a-21b).

CCRB Testimony

On January 28, 2013, SGT was interviewed at the CCRB (encl. 22a-22b).

On July 7, 2012, PO Perdomo, PO Joseph Ayala, PO Kenneth Ayala and PO Cronin walked across the street from the 46th Precinct stationhouse at East 181st Street and Ryer Avenue to approach a group of five to six individuals who were standing around while talking and playing music loudly. SGT Lloyd did not recall if any of these individuals were drinking beverages. During this time, SGT Lloyd got into the unmarked van that was parked on the other side of the street from the group approximately 200 feet away. She updated her memo book while she waited for the other officers and did not pay attention to what was going on with the group across the street. She did not hear any conversation between the officers and civilians and had no interaction with the group whatsoever.

After approximately five minutes, the other officers returned to the van after the corner

was cleared and they drove off. SGT Lloyd recalled no conversation that took place in the van about what had occurred.

Witness Officer: PO JOSEPH AYALA

- *PO Joseph Ayala is a § 87(2)(b)-year-old Hispanic male who stands 5'10" tall, weighs 240 pounds, and has black hair and brown eyes.*
- *On July 7, 2012, PO Joseph Ayala was on duty from 9:30 p.m. until 6:05 a.m. on July 8, 2012, was assigned to Conditions with PO Perdomo, was dressed in uniform and was assigned to an unmarked van, number 8390.*
- *On July 8, 2012, PO Joseph Ayala was on duty from 9:30 p.m. until 6:05 a.m. on July 9, 2012, was assigned to Conditions with PO Kenneth Ayala, was dressed in uniform and was assigned to an unmarked van, number 8390.*

Memo Book

PO Joseph Ayala had no entries in his memo book regarding either of the two incidents (encl. 23a-23g).

CCRB Statement

On October 11, 2012, PO Joseph Ayala was interviewed at the CCRB (encl. 23h-23i).

On July 7, 2012, PO Joseph Ayala was assisting with the arrest of a prisoner in the 46th Precinct stationhouse. When PO Joseph Ayala came outside, he recalled PO Perdomo issuing a summons to one civilian, but he remembered no further details about this incident. PO Joseph Ayala learned nothing about this incident from PO Perdomo after the fact. PO Joseph Ayala resumed patrol with PO Perdomo.

On July 8, 2012, PO Joseph Ayala was in the locker room of the 46th Precinct stationhouse when he had a conversation with PO Perdomo, who told him that he had just issued a summons to an individual for being disorderly in the stationhouse. PO Joseph Ayala did not witness the interaction between PO Perdomo and § 87(2)(b). PO Perdomo mentioned he had just given this individual a summons the day before, but said nothing further.

NYPD Document

Command Log

The command log for 46th Precinct stationhouse on July 8, 2012 (encl. 26n-26t), shows that SGT Patwekar covered the front desk for SGT Bryan's meal at 8:00 p.m. No entries were made in regard to § 87(2)(b).

Summons for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [REDACTED]
- [REDACTED]

Status of Civil Proceedings

§ 87(2)(b) has not filed a Notice of Claim with the City of New York as of October 23, 2012, with regard to the incident (encl. 27a).

Civilian Criminal History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History

This is the first CCRB complaint filed by § 87(2)(b) (encl. 7a).

Subject Officers CCRB History

- PO Perdomo has been a member of the service for six years and there is one substantiated CCRB allegation against him. In CCRB number 200807227, he received instructions for the use of force with a blunt instrument as a club (encl. 4a-4b).
- PO Kenneth Ayala has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 5a).
- PO Cronin has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 6a).

Conclusion

Identification of Subject Officers

All subject officers named in this case acknowledged interacting with § 87(2)(b)

Allegation Not Pled

§ 87(2)(b) alleged that on July 7, 2012, at East 181st Street and Ryer Avenue, PO Kenneth Ayala said, “Get the fuck out of here,” in the direction of the group that included § 87(2)(b) and § 87(2)(b). As § 87(2)(b) and § 87(2)(b) did not make this allegation in their phone statements, they have not been included as victims in Allegation A.

Investigative Findings and Recommendations

Allegation A: Discourtesy: On July 7, 2012, at East 181st Street and Ryer Avenue, PO Kenneth Ayala spoke discourteously to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) alleged that on July 7, 2012, at East 181st Street and Ryer Avenue, PO Kenneth Ayala said, “Get the fuck out of here,” in the direction of the group that included § 87(2)(b) and § 87(2)(b). In their phone statements, § 87(2)(b) § 87(2)(b) and § 87(2)(b) did not make this allegation. § 87(2)(b) and § 87(2)(b) could not be reached for a statement. PO Kenneth Ayala denied making this statement and PO Perdomo and PO Cronin denied hearing any officer make this statement. SGT Lloyd stated that she was not paying attention to the conversation and PO Ayala did not recall the details of the incident.

§ 87(2)(g)

Allegation B: Discourtesy: On July 7, 2012, at East 181st Street and Ryer Avenue, PO Rafael Perdomo spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that on July 7, 2012, at East 181st Street and Ryer Avenue, PO Perdomo said to him, “Back the fuck up, you have no rights.” In their phone statements, § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) said that PO Perdomo told § 87(2)(b) “You have no rights.”

PO Perdomo denied saying this and PO Kenneth Ayala and PO Cronin denied hearing any officer say this. SGT Lloyd stated that she was not paying attention to the conversation and PO Ayala did not recall the details of the incident.

§ 87(2)(g)

Allegation C: Discourtesy: On July 8, 2012, at the 46th Precinct stationhouse, PO Brendan Cronin spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that on July 8, 2012, at the 46th Precinct stationhouse, PO Cronin said to him, “You’ve got a lot of balls coming over here, get the fuck out of here, you got some fucking balls.” PO Cronin denied saying this and PO Joseph Ayala and PO Perdomo denied hearing any officer say this. The statements in the audio recording that § 87(2)(b) provided were made after this interaction allegedly occurred. § 87(2)(g)

Allegation D: Discourtesy: On July 8, 2012, at the 46th Precinct stationhouse, PO Rafael Perdomo spoke discourteously to § 87(2)(b)

In the audio recording of the interaction between § 87(2)(b) and PO Perdomo on July 8, 2012, at the 46th Precinct stationhouse, PO Perdomo tells § 87(2)(b) where his tax number can be found on the summons he had just issued him for disorderly conduct. PO Perdomo then states his badge number and says, “All right? I see you on the fucking corner? I’m gonna lock you up and bring you here and you could hang out here, § 87(2)(b) Get the hell out.”

Upon hearing this recording, PO Perdomo acknowledged making these statements. PO Perdomo said that he used aggression in these statements to effectively communicate to § 87(2)(b) that the summonses he received were in lieu of arrest and he could be arrested for these violations.

Patrol Guide Procedure 203-09 states that officers are to be courteous and respectful (encl. 1a). Police Department v. Seguinot OATH Index No. 552/00 (2000) (encl. 3a-3j) held that an officer is permitted to use profanity to forcefully make a point or to gain compliance with an order or direction.

§ 87(2)(g)

§ 87(2)(g)

Allegation E: Abuse of Authority: On July 8, 2012, at the 46th Precinct stationhouse, PO Rafael Perdomo threatened to arrest § 87(2)(b)

In the audio recording that § 87(2)(b) provided, PO Perdomo is heard telling § 87(2)(b) that if he ever sees him on the corner, he was going to arrest him. PO Perdomo stated he

said this because § 87(2)(b) continuously demonstrated his ignorance of the law by standing on the street corner although officers had repeatedly told him not to do so.

Patrol Guide Procedure 208-01 (encl. 3k-3l) states that for an arrest without a warrant, an officer must have reasonable cause to believe that an offense in his presence or a crime had been committed.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: One

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date